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6 Attorneys for Plaintiff  
United States of America

7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 MIGUEL ANGEL NEGRON,

13 Defendant.

) Criminal Case No. 08-CR-1007-JLS

) DATE: May 16, 2008

) TIME: 1:30 p.m.

) **UNITED STATES' NOTICE OF MOTIONS  
AND MOTIONS FOR:**

14 ) **(1) FINGERPRINT EXEMPLARS**

15 ) **(2) RECIPROCAL DISCOVERY**

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17 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel,  
18 Karen P. Hewitt, United States Attorney, and David D. Leshner, Assistant United States Attorney, and  
19 hereby files its Motions for Fingerprint Exemplars and Reciprocal Discovery in the above-referenced  
20 case. Said motions are based upon the files and records of this case together with the attached  
21 memorandum of points and authorities.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I**

3 **STATEMENT OF THE CASE**

4 On April 2, 2008, a one-count indictment was filed charging defendant Miguel Angel Negrón  
5 with a violation of Title 8, United States Code, Sections 1326(a) and (b). Defendant was arraigned on  
6 the indictment on April 8, 2008 and entered a plea of not guilty.

7 **II**

8 **STATEMENT OF FACTS**

9 **A. Defendant's Apprehension**

10 On January 12, 2008, Defendant attempted to enter the United States from Mexico through the  
11 San Ysidro, California Port of Entry pedestrian primary lanes. At primary inspection, Defendant  
12 presented an Mexican Passport in the name of Sanchez Cisnero Everado with a counterfeit biographical  
13 page and a counterfeit Temporary Resident Admission Stamp. Defendant represented to the primary  
14 inspection officer that he was going to work in San Diego.

15 Submission of Defendant's fingerprints revealed his true identity, Miguel Angel Negrón, as well  
16 as his criminal and immigration history. Officers arrested Defendant and provided him with Miranda  
17 warnings. Defendant declined to make a statement.

18 **B. Defendant's Immigration History**

19 Defendant is a citizen of Mexico. On or about November 4, 1991, Defendant was removed from  
20 the United States to Mexico pursuant to an Order of an Immigration Judge. Defendant subsequently was  
21 removed from the United States to Mexico on August 10, 2007.

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**C. Defendant's Criminal History**

Defendant's criminal history includes the following convictions:

CONVICTION DATE	COURT	CHARGE	TERM
9/5/2006	USDC Oregon	Illegal Entry (8 U.S.C. § 1325)	24 months
1/17/2004	Marion Co. Circuit Ct. (Oregon)	Assault IV	30 days jail
12/6/2000	Marion Co. Circuit Ct. (Oregon)	Contempt (Violation of Restraining Order)	15 days jail
2/7/1999	Marion Co. Circuit Ct. (Oregon)	False Information to Police Officer	5 days jail
11/26/1989	Marion Co. Circuit Ct. (Oregon)	Rape (First Degree with Threat of Physical Injury) Kidnaping (Second Degree) Sexual Abuse (First Degree)	8 years prison

**III**

**UNITED STATES' MOTIONS**

**A. Motion For Fingerprint Exemplars**

The Government requests that the Court order that Defendant make himself available for fingerprinting by the Government's fingerprint expert. See United States v. Ortiz-Hernandez, 427 F.3d 567, 576-77 (9th Cir. 2005) (Government may have defendant fingerprinted and use criminal and immigration records in Section 1326 prosecution). Identifying physical characteristics, including fingerprints, are not testimonial in nature, and the collection and use of such evidence would not violate Defendant's Fifth Amendment right against self-incrimination. United States v. DePalma, 414 F.2d 394, 397 (9th Cir. 1969). See also Schmerber v. California, 384 U.S. 757, 761 (1966) (withdrawal of blood is not testimonial).

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1 **B. Motion For Reciprocal Discovery**

2 The Government has and will continue to fully comply with its discovery obligations. To  
3 date, the Government has provided Defendant with 66 pages of discovery and one DVD, including  
4 reports of his arrest, his rap sheet, and copies of immigration and conviction documents.

5 The Government moves the Court to order Defendant to provide all reciprocal discovery to  
6 which the United States is entitled under Federal Rules of Criminal Procedure 16(b) and 26.2.  
7 Specifically, Rule 16(b)(1) requires Defendant to disclose to the United States all exhibits, documents  
8 and reports of testing or examination which Defendant intends to use in his case-in-chief at trial and a  
9 written summary of the names, anticipated testimony, and bases for opinions of experts the defendant  
10 intends to call at trial under Rules 702, 703, and 705 of the Federal Rules of Evidence.

11 **IV**

12 **CONCLUSION**

13 For the foregoing reasons, the Government respectfully requests that the Court grant its motions.

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15 DATED: April 11, 2008.

Respectfully submitted,

16 Karen P. Hewitt  
17 United States Attorney

18 s/ David D. Leshner  
19 DAVID D. LESHNER  
20 Assistant U.S. Attorney  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Case No. 08-CR-1007-JLS
	)	
Plaintiff,	)	
	)	
v.	)	
	)	CERTIFICATE OF SERVICE
MIGUEL ANGEL NEGRON,	)	
	)	
Defendant.	)	

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IT IS HEREBY CERTIFIED THAT:

I, DAVID D. LESHNER, am a citizen of the United States and am at least eighteen years of age.  
My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **UNITED STATES NOTICE OF MOTIONS AND MOTIONS FOR FINGERPRINT EXEMPLARS AND RECIPROCAL DISCOVERY** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Hanni Fakhoury, Esq.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 11, 2008.

/s/ David D. Leshner  
DAVID D. LESHNER